

NEIGHBORHOOD STABILIZATION PROGRAM

**DEED RIDER
For
Ownership Project**

(annexed to and made part of that certain deed (the "Deed")
from _____ ("Marlborough Community Development Authority")
to _____ ("Grantee")
dated _____, 20__.)

for property located at _____, as more particularly described
in the Deed (the "Property")

WITNESSETH

WHEREAS, Title III of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289) authorized the establishment of the Massachusetts Neighborhood Stabilization ("NSP") Program as a component of the federal Neighborhood Stabilization Program;

WHEREAS, the Department of Housing and Community Development, duly organized and existing pursuant to G.L. c. 23B §1 as amended by Chapter 19 of the Acts of 2007 ("DHCD"), administers the NSP Program on behalf of the Commonwealth of Massachusetts, has provided financing to the Marlborough Community Development Authority (MCDA) in connection with the construction of the property located at _____, more particularly described in the Deed (the "Property"), in the amount of _____ (the "Direct Subsidy"), which is equal to the fair market value of the property minus the affordable sale price to the Grantee;

WHEREAS, it is the purpose of the NSP Program to assist in the purchase and rehabilitation of foreclosed-upon and abandoned properties by households having low and moderate incomes;

WHEREAS, the Marlborough Community Development Authority (the "Grantor") is participating in the NSP Program and has entered into a grant agreement with DHCD whereby DHCD has provided financial assistance for the purpose of undertaking NSP projects;

WHEREAS, as a result of such financial assistance, MCDA is conveying the Property to the Grantee at a consideration which is less than the fair market value of the Property;

WHEREAS, in consideration of the granting of such financial assistance DHCD has required that the MCDA impose a deed restriction on the Grantee providing for recapture of the financial subsidy in certain circumstances;

WHEREAS, DHCD (the "Monitoring Agent") will provide monitoring services to determine compliance on this deed restriction;

WHEREAS, DHCD has determined that the rights and restrictions granted herein to DHCD serve the public's interest in the creation and retention of affordable housing for persons and families of low and moderate income;

WHEREAS, pursuant to the NSP Program, eligible purchasers such as the Grantee are given the opportunity to purchase certain property with financial assistance if the MCDA agrees to impose a deed restriction on the Grantee providing for the recapture of the financial subsidy in certain circumstances;

NOW THEREFORE, as further consideration from the Grantee to the MCDA, DHCD for the conveyance of the Property with financial assistance in accordance with the NSP Program, the Grantee, its heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the MCDA's assignees and designees, the Undersecretary of the Department of Housing and Community Development, or its successors, assigns, agents and designees ("Undersecretary").

1. Notice: (a) When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof prior to the fifteenth anniversary of the date of this Deed Rider, the Grantee shall notify the Undersecretary in writing of the Grantee's intention to so convey the property ("Notice"). The Notice shall set forth the sale price of the Property and shall attach a copy of an executed offer to purchase or purchase and sale agreement. The Notice shall be accompanied by an independent written real estate appraisal by a licensed real estate appraiser acceptable to DHCD, within three months of the resale, with the appraised value being the fair market value.

(b) If the Grantee provides the required Notice to the Undersecretary, then the Grantee may convey the Property to any third party on the terms set forth below.

In the case of a sale to a third party, the Grantee may convey the Property free of all restrictions set forth herein, provided, however, that the "Recapture Amount" shall be immediately and directly paid to Marlborough Community Development Authority (the "Community Development Authority"). The "Recapture Amount" shall be the greater of (x) the Direct Subsidy reduced by one fifteenth for each full year elapsed from the date of this Deed Rider until the date of such sale or transfer and (y) the Net Proceeds (as defined below). In no event, however, will the Recapture Amount be greater than the amount ("Net Proceeds") by which the resale price of the Property exceeds the sum of the total amount of allowable secured debt on the property plus Broker's fees, recording costs and excise taxes incurred by the Grantee in connection with the sale of the Property.

Upon receipt of the Recapture Amount, if any, the Undersecretary or the Undersecretary's designee shall issue to the third party a certificate in recordable form

(the "Compliance Certificate") indicating the Community Development Authority's receipt of the Recapture Amount, if applicable, or indicating that no Recapture Amount is payable. This Compliance Certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry District of the Land Court and such Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such Recapture Amount, if any, has been paid to the Community Development Authority, or that no Recapture Amount is payable, and that the rights, restrictions, agreements and covenants set forth herein are null and void, provided, that the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Compliance Certificate

2. Resale and Transfer Restrictions: (a) Except as otherwise stated herein, the Property or any interest, therein shall not at any time prior to the fifteenth anniversary of this Deed Rider be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless pursuant to Section 1 the Recapture Amount is paid by the Grantee to the Community Development Authority and DHCD shall execute and deliver a Compliance Certificate as described in Section 1.

(b) Within ten (10) days of the closing of the conveyance of the Property from the MCDA to Grantee, the Grantee shall deliver to the Undersecretary a true and certified copy of the Deed of the Property, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

3. Restrictions Against Leasing and Junior Encumbrances: The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Undersecretary, provided, however, that this provision shall not apply to a first mortgage granted in connection with this conveyance. Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Undersecretary shall be paid to and be the property of the Community Development Authority. In the event that the Undersecretary in the exercise of their absolute discretion consent to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction which exceed the carrying costs of the Property as determined by DHCD in their sole discretion shall be paid to and be the property of the Community Development Authority.

4. Rights of Mortgagees: (a) Notwithstanding anything herein to the contrary, but subject to the next succeeding paragraph hereof, if the holder of record (other than the MCDA or any person related to the MCDA by blood, adoption, or marriage, or any entity in which the MCDA has a financial interest) of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns (other than the MCDA, or any person related to the MCDA by blood, adoption or marriage, or any entity in which the MCDA has a financial interest)

shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given DHCD not less than (60) days prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure, the rights and restrictions contained herein shall not apply to such holder upon such acquisition of the Property, any purchaser (other than the Grantee or any person related to the Grantee by blood, adoption or marriage, or any entity in which the MCDA has a financial interest) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Grantee or any person related to the Grantee by blood, adoption or marriage, or any entity in which the Grantee has a financial interest) of the Property from such holder, and such Property shall thereupon and thereafter be free from all such rights and restrictions.

(b) In the event such holder, conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the holder is entitled to recover pursuant to the terms of the mortgage such excess shall be paid to the Community Development Authority in consideration of the loss of the value and benefit of the rights and restrictions herein contained held by the Undersecretary and released by the Undersecretary pursuant to this section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Community Development Authority by such holder, the Community Development Authority shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Community Development Authority in accordance herewith, provided that such holder shall give the Community Development Authority prompt notice of any such claim and shall not object to intervention by the Community Development Authority in any proceeding relating thereto.) To the extent the Grantee possesses any interest in any amount which would otherwise be payable to the Community Development Authority under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to the Community Development Authority.

5. Covenants to Run With the Property: (a) The MCDA and the Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Undersecretary, the Undersecretary's agents, successors, designees and assigns the right to enforce the rights and restrictions, covenants and agreements set forth in this Deed Rider. The MCDA and the Grantee hereby grant to the Undersecretary the right to enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements herein contained. The rights hereby granted to the Undersecretary shall be in addition to and not in limitation of any other rights and remedies available to the MCDA or the Undersecretary for enforcement of the restrictions, rights, covenants and agreements set forth in this Deed Rider. It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth above shall be deemed to be covenants running with the Property and shall be binding upon and

enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Undersecretary, the Undersecretary's agents, successors, designees and assigns provided that this Deed Rider shall terminate (i) upon the recording of a Compliance Certificate or (b) upon the fifteenth anniversary of this Deed Rider, provided that no violation of the Deed Rider has occurred prior thereto.

(b) This Deed Rider and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c. 184, §§ 26, 31, 32, and 33.

(c) The Grantee intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the term of this Deed Rider, and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, its successors and assigns and enure to the benefit of the Undersecretary and their successors and assigns for the term of the Deed Rider. Grantee hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the MCDA and the Undersecretary, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Undersecretary, the Undersecretary's agents, successors, designees or assigns by suit in equity to enforce such rights, restrictions, covenants, and agreements.

6. Notice: Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party by such notice.

DHCD: Department of Housing and Community Development
Att'n: Director, Neighborhood Stabilization Program
Division of Community Services
100 Cambridge Street, Suite 300
Boston, MA 02114

MCDA: Marlborough Community Development Authority
255 Main Street, Suite 209
Marlborough, Ma 01752

Grantee:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

7. Further Assurances: The Grantee agrees from time to time, as may be reasonably required by the Undersecretary, to furnish the Undersecretary with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other information pertaining to the Property or the Grantee's eligibility for and conformance with the requirements of the NSP Program.

8. Waiver: Nothing contained herein shall limit the rights of the Undersecretary to release or waive, from time to time, in whole or in part, any of the rights, restrictions, covenants or agreements contained herein with respect to the Property. Any such release or waiver must be made in writing and must be executed by the Undersecretary or his/her designee.

9. Severability: If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

Executed as a sealed instrument this _____ day of _____, 20____.

MCDA:

By
Signature

Name

Its

Grantee:

By
Signature

Name

Signature

Name

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document [MCDA], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

Print Name:

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document [Grantee], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

Print Name:

My commission expires:

© DHCD When used in the Neighborhood Stabilization Program, this form may not be modified without the written approval of the Department of Housing and Community Development.